

Surface Transportation Board

STB Ex Parte No. 582 (Sub No 1)

Major Rail Consolidation Procedures

November 17, 2000

COMMENTS OF THE

Transportation Intermediaries Association

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Office of the Secretary

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The Transportation Intermediaries Association (TIA) respectfully submits the following comments to the Surface Transportation Board (STB) in response to the Notice of Proposed Rulemaking (NPR) issued October 3, 2000.

TIA commends the STB for reviewing and updating rail merger rules in view of the certainty that future major rail mergers could leave the nation with two major Class I railroads. While many rail customers, including the intermodal marketing companies (IMCs) that TIA represents, do not feel that the current rail industry provides enough competition, the end result of any further mergers would create a nation of captive shippers with little or no competitive options.

TIA's 800 member companies, including 49 of which are IMC members, serve more than 300,000 shippers each year. Our members seek increased use of intermodal rail transportation to meet the growing needs of the shipping public.

- While TIA supports the thrust of the NPR, which calls for "enhanced competition" as a standard for any future rail merger, the NPR provides few specifications on how this would be accomplished. The question at the heart of this rulemaking is how does the STB work to ensure a national rail system that meets the needs of the shipping public while relying on competition to prevent market abuse.

In our view, public interest requires a competitive rail system that provides consistent, reliable, and safe service at a fair price to both large and small rail customers who wish to use the system. Such a system would play a major role in the nation's transportation network by alleviating highway congestion, reducing air pollution, providing critical transportation services, and supporting and encouraging economic development and growth.

Four years of mergers has resulted in a deteriorated rail system that has damaged both rail customers and railroads. Many rail customers have had to shut down various

manufacturing facilities. IMC's, which expected their business to grow after railroads promised growth in their intermodal business, have lost customers and forced to add millions of trucks onto the nation's already congested highways.

Cumulative Impacts

TIA supports the NPR's call for merger applicants to look at the cumulative impacts of mergers. When reviewing these impacts, rail carrier merger applicants should be required to show how their merger will provide and enhanced rail-to-rail competition. The idea of competition was the backbone of the Staggers Act. We believe the STB must return to that idea if the nation is going to have an efficient, safe, productive, and profitable rail transportation system. The burden of proof is on the merging railroads; they should be held to a higher standard of enhancing competition, not merely preserving that which existed before the merger.

Accountable For Promises

We also believe that railroad merger applicants should be held accountable for the promises made in merger applications. TIA urges the STB to consider adding punitive punishments as a condition of future mergers if certain merger promises are not met. No one likes to penalize someone, however we have seen little or no accountability in previous rail mergers.

A case in point is the Conrail transaction. In their merger application, both CSX and Norfolk Southern railroads promised to take one million trucks off the road after one year. Unfortunately, the merger had the opposite effect and put two million trucks on the road. In fact, just recently CSX cancelled all rail intermodal services between Atlanta and the Northeast (I-95) corridor. Consequently, trucks were used to move the loads over-the-road, directly contradicting their merger application.

Injunctive Relief Through Arbitration

Rail customers currently believe there is not an efficient, timely and cost-effective way to review rate or access issues. In a recent General Accounting Office (GAO) report on railroad regulation¹, rail customers estimated that an average case before the STB takes five years and costs \$3 million to process. With these obstacles before them, GAO reported that in a survey of rail customers, 75 percent believe that barriers kept them from filing a complaint². One way to correct this problem is through an arbitration process.

IMCs face increased discrimination due to rail mergers. Larger rail carriers, in part to alleviate service problems, raised annual volume minimums and bonding requirements. As a result, many small to medium-sized IMCs were forced off the rail system. When service deteriorates after a merger, rail carriers tend to reduce the amount of cars online. To do this, carriers go after the smaller rail customers while attempting to improve service to their larger rail customer.

We urge the STB to ensure that this rulemaking contains protections that allow continued access to both large and small customers. This is in line with the original intent of the Staggers Act. The use of arbitration would provide IMCs and other rail customers a timely and affordable remedy for alleged discriminatory practices.

Conclusion

TIA supports the specific remedies raised by other IMCs and rail customers in this proceeding. Specifically, TIA urges the STB to adopt the following provisions to its merger standards: 1) immediate injunctive relief through an arbitration system; 2) punitive damages; and 3) reasonableness of rules.

¹ *Railroad Regulation: Railroad Rate Relief Process*, General Accounting Office, GAO/RCED-99-46, P. 24

² *Railroad Regulation: Railroad Rate Relief Process*, General Accounting Office, GAO/RCED-99-46, P. 47

In sum, TIA believes the NPR provides a positive outline on improving rail merger rules. We urge the STB to include precise details on how future rail mergers will provide rail-to-rail competition, enhance competition, and provide protections to IMCs from discriminatory volume and bond requirements.

Thank you for your consideration of the views of the Transportation Intermediaries Association.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert A. Voltmann", followed by a horizontal line.

Robert A. Voltmann
Executive Director & CEO

Due and dated: November 17, 2000

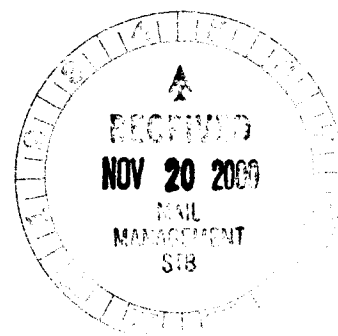
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Transportation
Intermediaries
Association

November 17, 2000

Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No 1)
Surface Transportation Board
1925 K. Street, N.W.
Washington, D.C. 20423-0001



Dear Secretary Williams:

Enclosed for filing in STB Ex Parte No. 582 (Sub-No. 1) is the original and twenty five copies of the comments of the Transportation Intermediaries Association (TIA). Also enclosed is diskette containing the comments which may be converted to WordPerfect 7.0. I also certify that copies of TIA's comments have been sent to all parties of record in this proceeding.

Sincerely,

A handwritten signature in black ink, appearing to read 'Robert A. Voltmann', followed by a long horizontal line.

Robert A. Voltmann
Executive Director & CEO